



PATENT
Atty Docket No. AMO0007
27573

I CERTIFY THAT ON DECEMBER 30, 2010, WHICH IS THE DATE I AM SIGNING THIS CERTIFICATE, THIS CORRESPONDENCE AND IDENTIFIED ENCLOSURES ARE BEING DEPOSITED IN THE UNITED STATES POSTAL SERVICE, POSTAGE PAID FIRST CLASS, IN AN ENVELOPE ADDRESSED TO: MAIL STOP POST ISSUE, COMMISSIONER FOR PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450.


STEVEN W. SMYRSKI

Certificate
JAN 21 2011
of Correction

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Confirmation No.: 4690

MARK E. STEEN ET AL.

Group Art Unit: 3763

Title: SYSTEM AND METHOD FOR
MODULATED SURGICAL PROCEDURE
IRRIGATION AND ASPIRATION

Examiner: Nathan R. Price

Serial No.: 10/619,088
Patent No. 7,846,126

Filed: July 14, 2003

Issued: December 7, 2010

**REQUEST FOR ISSUANCE OF CORRECTED PATENT DUE TO SERIOUS
ERROR**

Mail Stop Post Issue
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

U.S. Patent 7,846,126 (the "Patent") issued on December 7, 2010.

The Patent issued with informal drawings, which in certain instances are blurry and unclear, including FIGs. 9A-9D. Applicants filed formal drawings together with the Issue Fee on October 26, 2010, and in accordance with the MPEP

rules for drawings filed after the Notice of Allowability, these formal drawings should have been forwarded to the Office of Data Management and published with the Patent. They were not; the drawings filed on October 26, 2010 were ignored.

This is not an insignificant error; this is a very serious error, namely publication of unacceptable drawings, and as a result, Applicants ask that a corrected patent be issued with the correct formal drawings filed in October 2010.

DISCUSSION

Applicants filed Formal Drawings with the Issue Fee for this case on October 26, 2010. A true and correct copy of the formal drawings filed and a copy of the “Submission of Formal Drawings” document accompanying the drawings are attached hereto as Exhibit A. Exhibit B shows a copy of the postcard received indicating receipt of the Formal Drawings. Exhibit C is a true and correct copy of the Formal Drawings downloaded on December 30, 2010 from the USPTO PAIR system, demonstrating that these Formal Drawings were fully available for use by the Office of Data Management in the issuing Patent.

Exhibit D is a true and correct copy of the drawings that issued with U.S. Patent 7,846,126. These are informal drawings, corresponding to drawings that were originally filed with the present application. Certain of these drawings are blurry, and such blurriness is unacceptable for publication. *See, e.g.,* 37 C.F.R. §1.84(I) (“Every line, number, and letter must be durable, clean, black (except for color drawings), sufficiently dense and dark, and uniformly thick and well-defined. ... This requirement...applies to shading...”) The published lines in FIGS. 9A-9D, for example, are not “clean” nor “uniformly thick” nor “well defined. Element 404 in published FIG. 4, for example, is blurry and not shaded in accordance with the requirements of 37 C.F.R. §1.84. For these reasons, Applicants commissioned preparation of formal drawings and filed the commissioned formal drawings together with the Issue Fee, under a separate cover entitled “Transmittal of Formal Drawings,” on October 26, 2010.

Drawing requirements, and drawings to be provided to the Office of Data Management, are quite clearly spelled out. MPEP 608.02(z) II ("Utility Patent Applications Receiving Formal Drawings After the Notice of Allowability") states:

Where replacement drawings are received in utility patent applications examined with informal drawings and the Notice of Allowability was mailed prior to the receipt of the replacement drawings, the technical support staff should forward the replacement drawings to the Office of Data Management. Submission to the examiner is not necessary unless an amendment accompanies the drawings which changes the specification, such as where the description of figures is added or canceled. (emphasis added)

Here, formal replacement drawings were provided to the PTO (and received "in a utility patent [application]"') after the mailing of the Notice of Allowability. The Notice of Allowability was mailed on July 26, 2010, prior to the receipt by the Patent Office of the replacement drawings of Exhibit A, mailed October 26, 2010. *These formal replacement drawings should therefore have been forwarded to the Office of Data Management in accordance with MPEP 608.02(z), but were not.* As a result, unacceptable drawings published with the patent. This is a serious error.

Applicants incurred expense in obtaining and providing the drawings of Exhibit A with the payment of the Issue Fee. Applicants' attorney has never seen formal drawings filed with the Issue Fee not publish with the issued patent when such drawings were timely filed, i.e. within three months of mailing of a Notice of Allowability. There was no reason to simply ignore the formal drawings filed, and fail to forward them to the Office of Data Management.¹ Applicants submit that this is not a minor error, nor can it be adequately cured using a Certificate of Correction. Formal replacement drawings were timely filed and the Patent should have issued with these replacement drawings. Applicants respectfully request correction of this

¹ Applicants acknowledge that no identifying indicia were provided on the formal replacement drawings filed on October 26, 2010, and the drawings included no labeling such as "REPLACEMENT SHEET." However, absence of these indications is a technicality unrelated to the requirement of MPEP 608.02(z), which requires drawings such as these to be forwarded to the Office of Data Management for publication. These drawings were adequately identified by the attached document ("Submission of Formal Drawings") shown at the beginning of Exhibit A. These drawings were and are available on the PAIR site for this application, and should have been forwarded with the rest of the application to the Office of Data Management for publishing. They were not. Inclusion of identifying indicia would not have prevented this PTO error.

PTO error, namely the failure to forward timely filed replacement drawings to the Office of Data Management, by issuing a corrected patent.

Applicants expressly request a corrected patent issue for this application including the formal replacement drawings timely filed.

CONCLUSION

Applicants believe that no fees are due. Should any fees be due, the Commissioner is hereby authorized to charge any deficiencies or credit any overpayment to Deposit Account 502026.

Respectfully submitted,



Date: December 30, 2010

Steven W. Smyrski, Esq.
Registration No. 38,312

SMYRSKI LAW GROUP, A.P.C.
3310 Airport Avenue, SW
Santa Monica, California 90405-6118
Phone: 310.397.9118
Fax: 310.397.9158

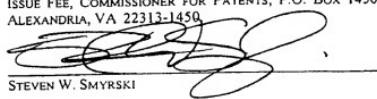
AMO0007 Req for Corrected Patent 12_30_10.doc

Exhibit A



PATENT
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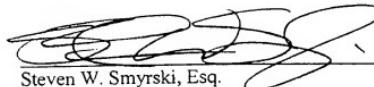
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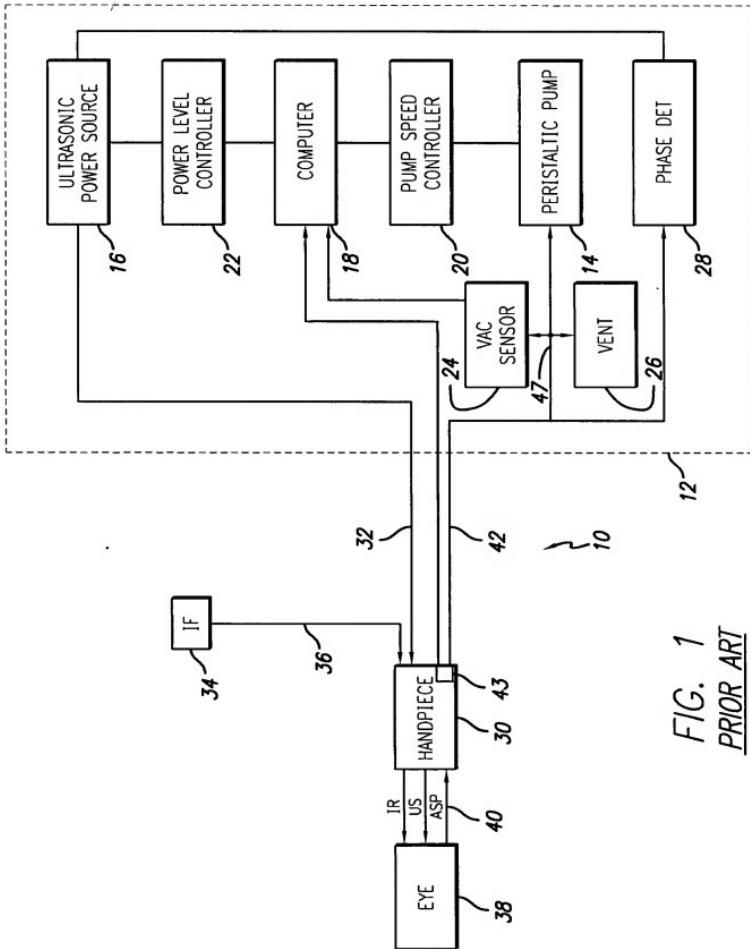
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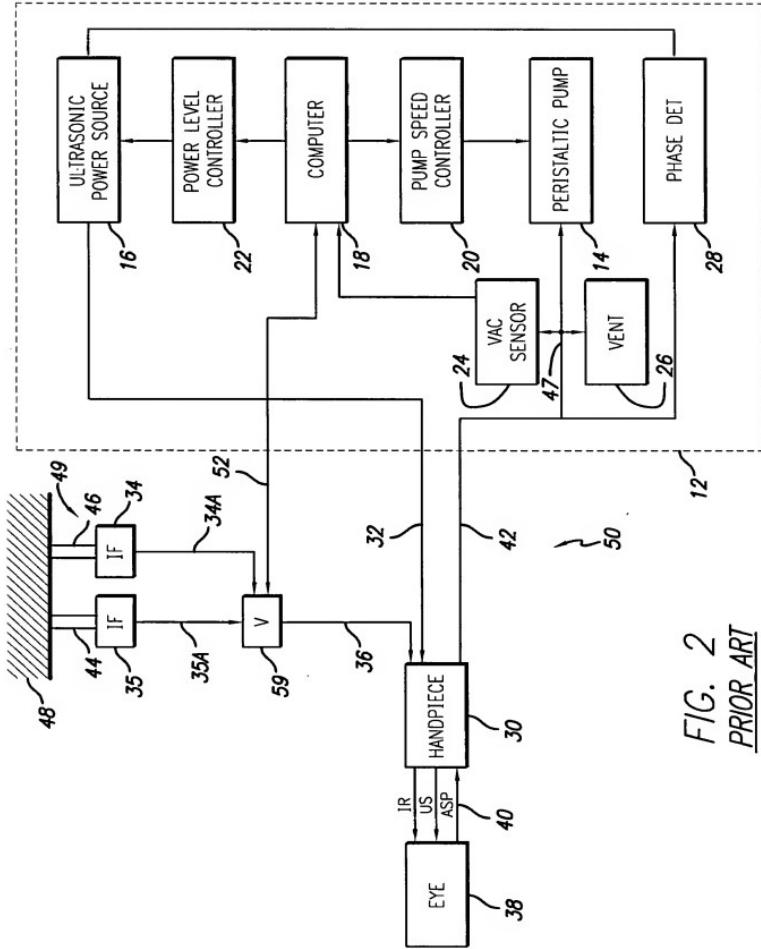


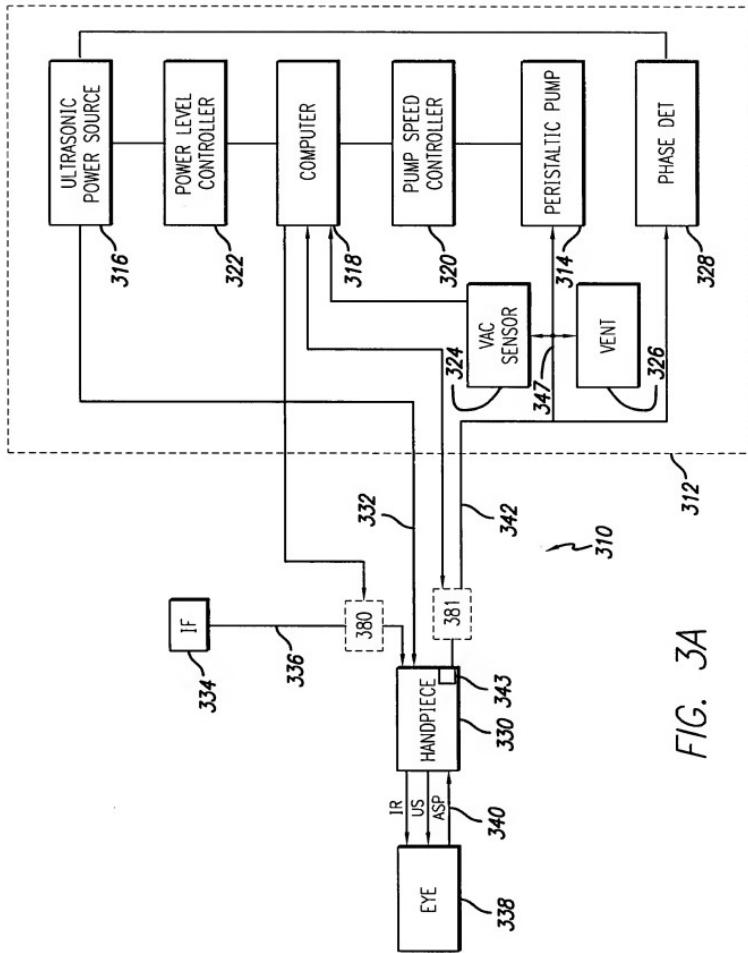
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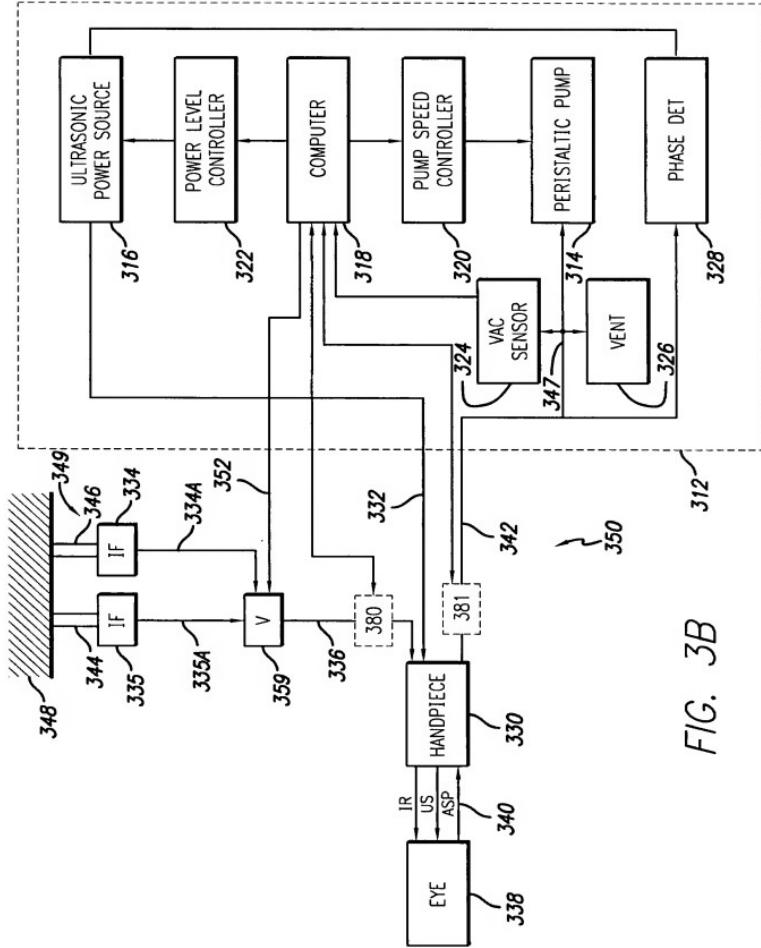
Steven W. Smyrski, Esq.
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Santa Monica, California 90405-6118
Phone: 310.397.9118
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AMO0007 Transmittal of drawings_102610









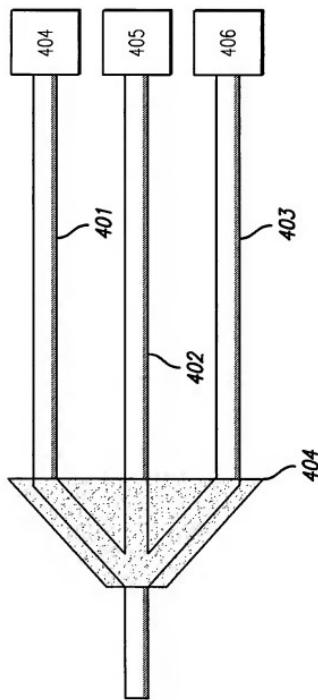


FIG. 4

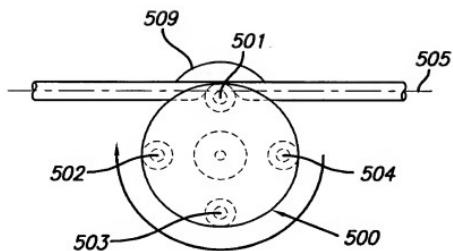


FIG. 5A

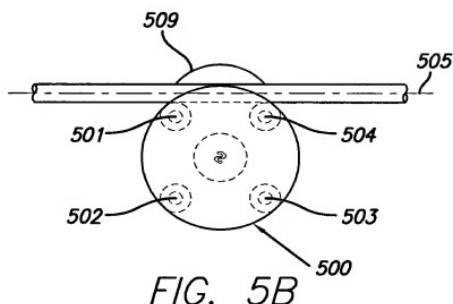


FIG. 5B

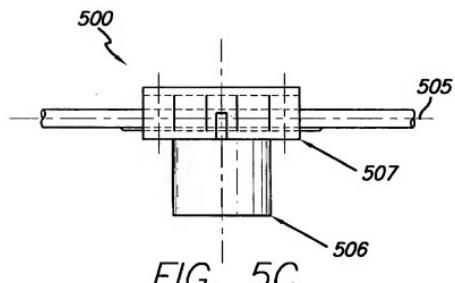


FIG. 5C

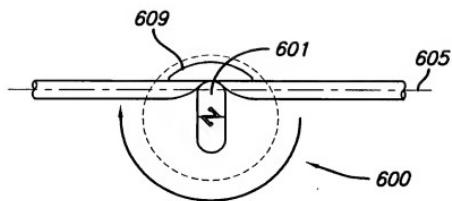


FIG. 6A

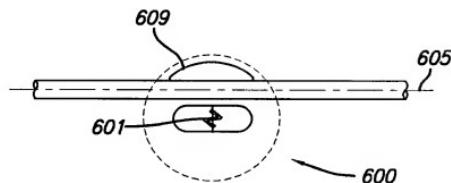


FIG. 6B

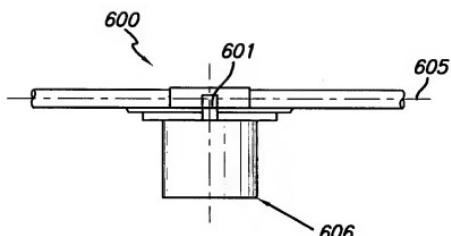


FIG. 6C

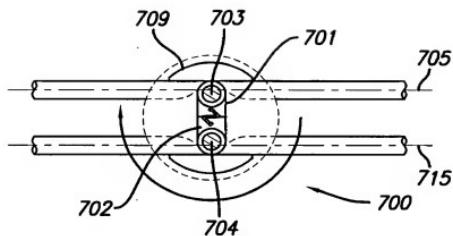


FIG. 7A

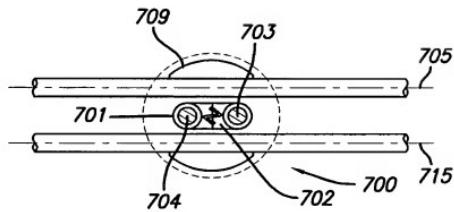


FIG. 7B

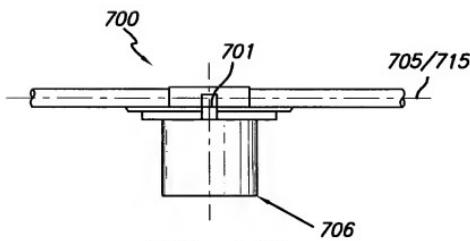


FIG. 7C

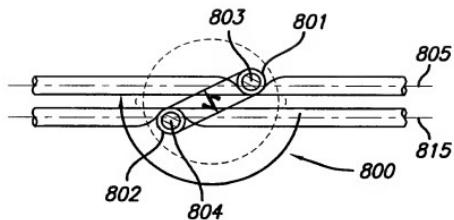


FIG. 8A

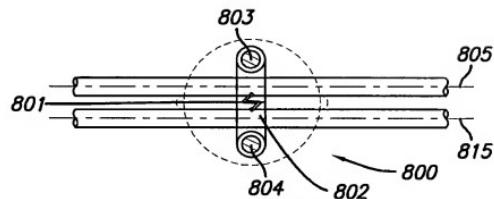


FIG. 8B

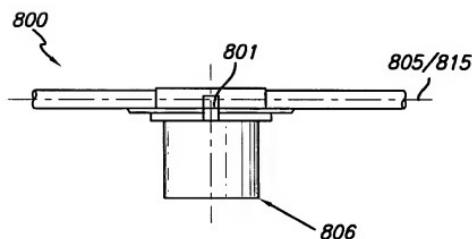


FIG. 8C

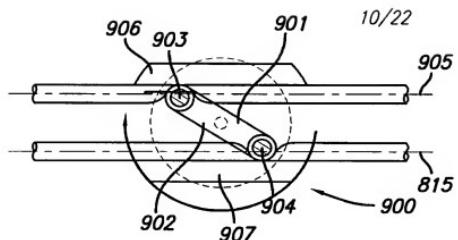


FIG. 9A

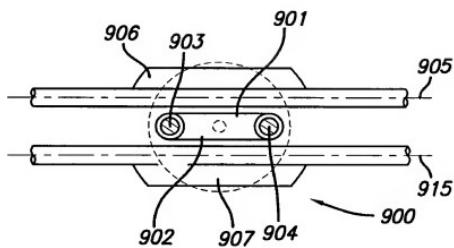


FIG. 9B

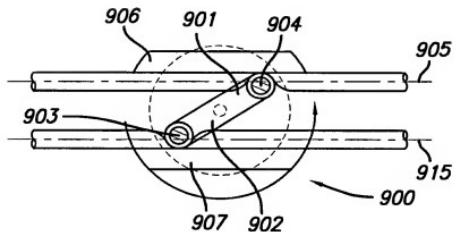


FIG. 9C

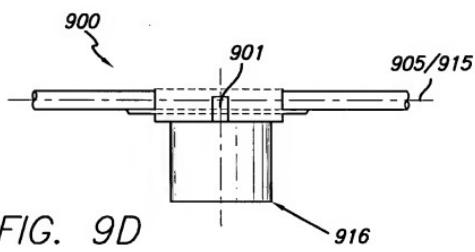


FIG. 9D

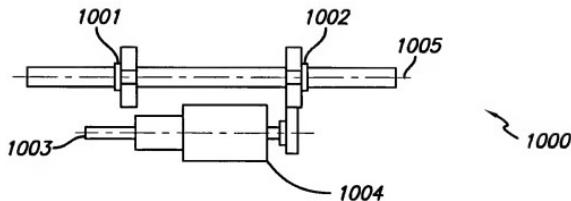


FIG. 10A

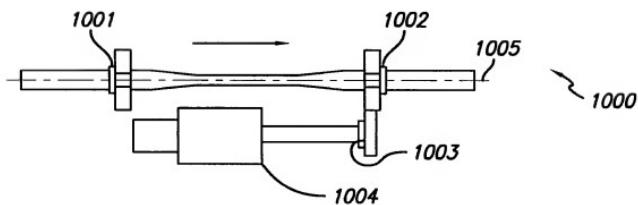


FIG. 10B

12/22

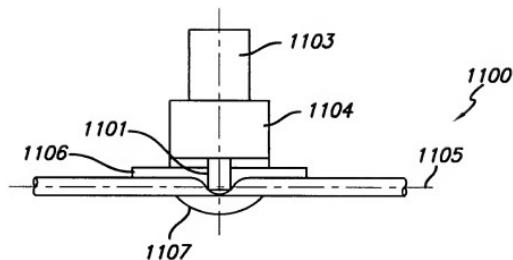


FIG. 11A

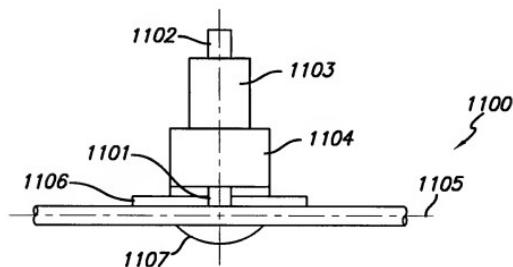


FIG. 11B

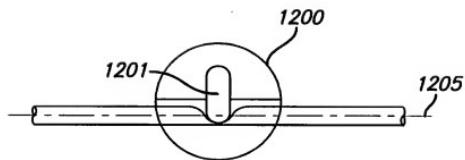


FIG. 12A

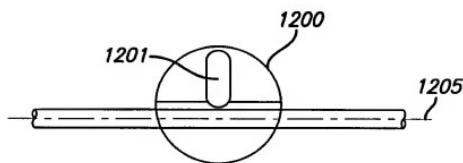


FIG. 12B

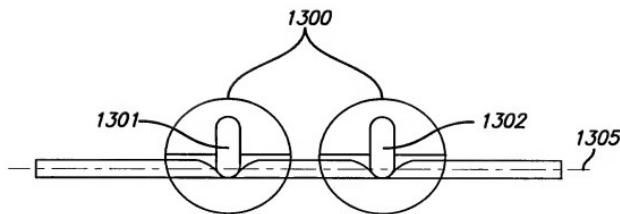


FIG. 13A

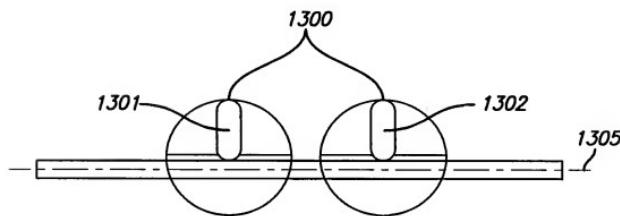


FIG. 13B

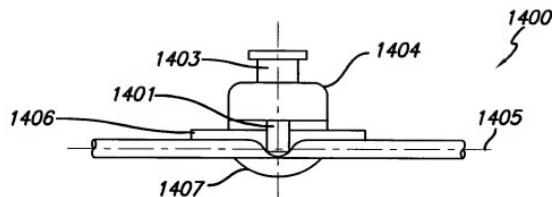


FIG. 14A

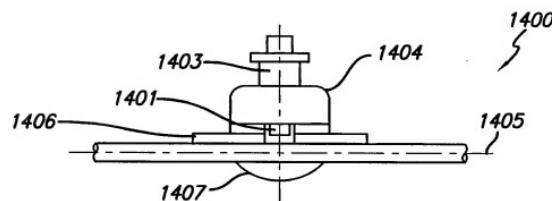


FIG. 14B

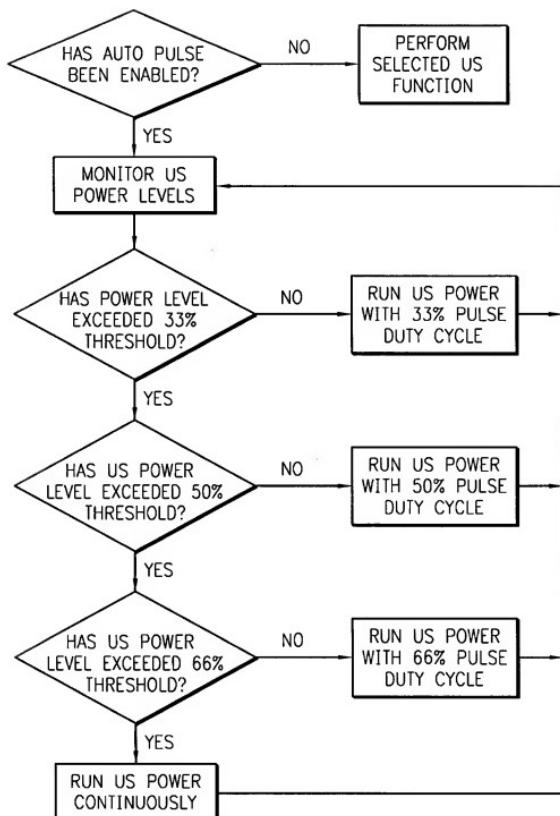


FIG. 15

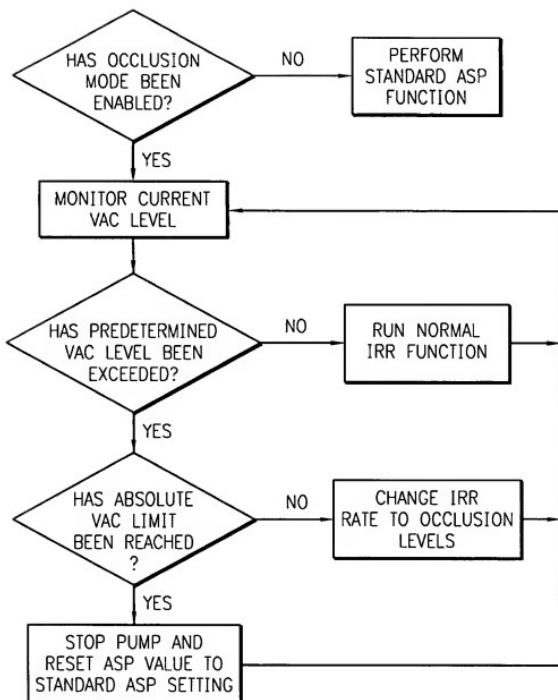


FIG. 16

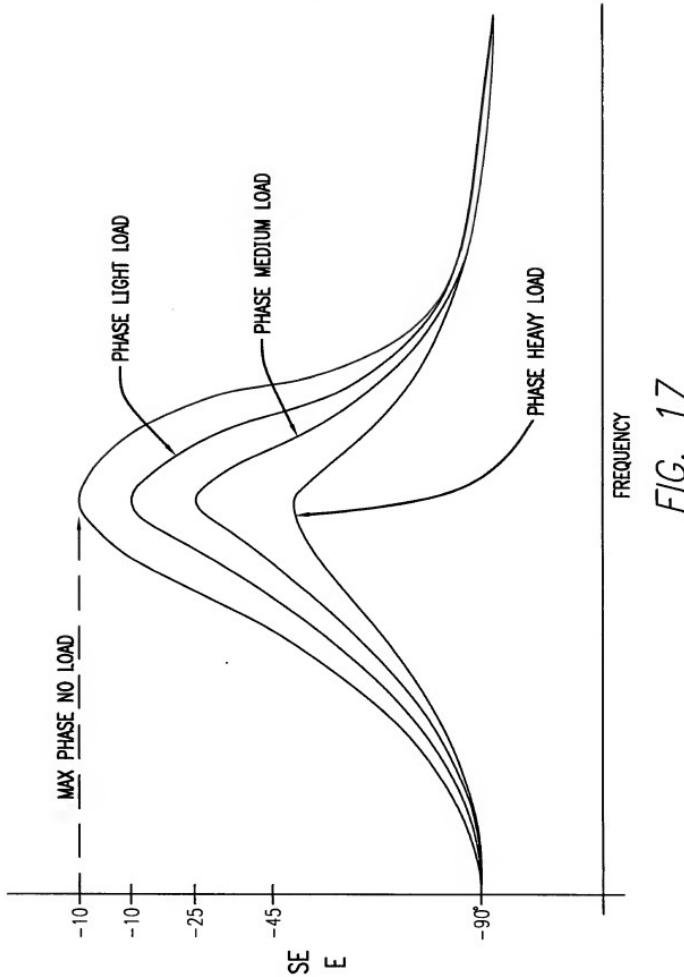


FIG. 17

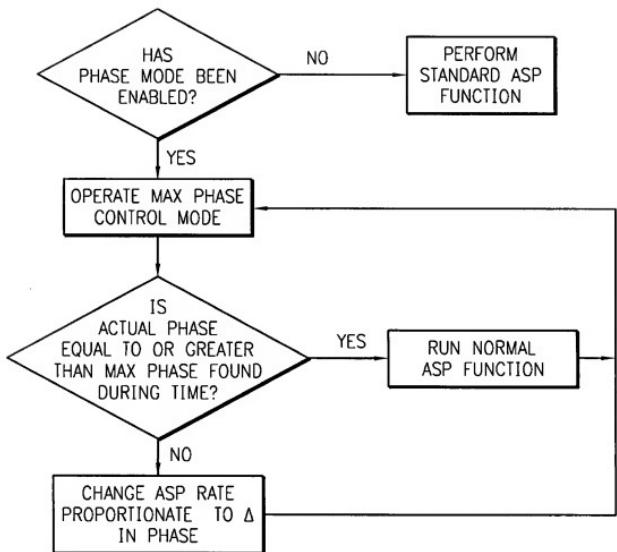


FIG. 18

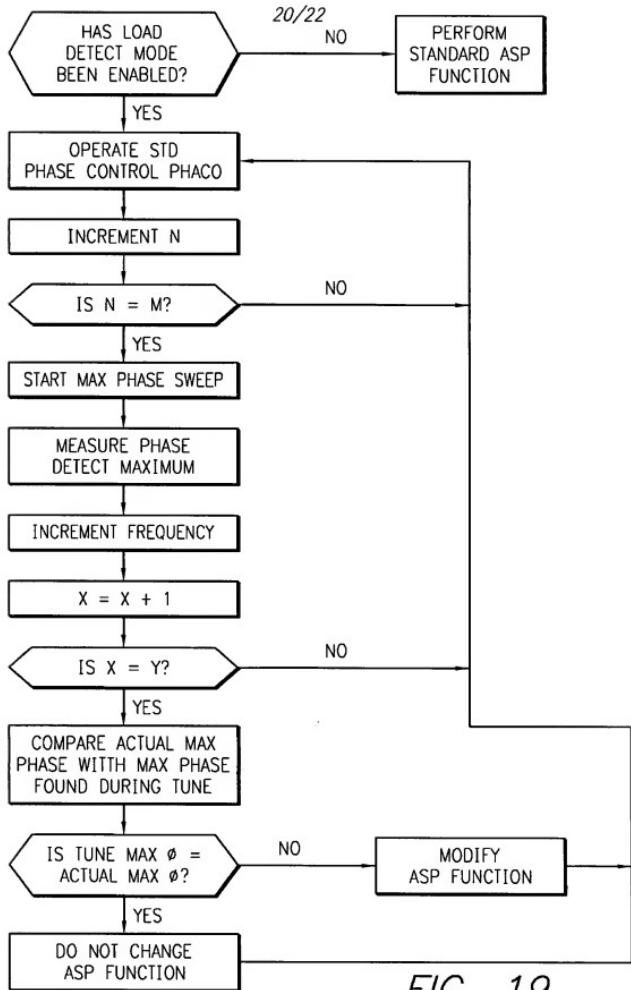
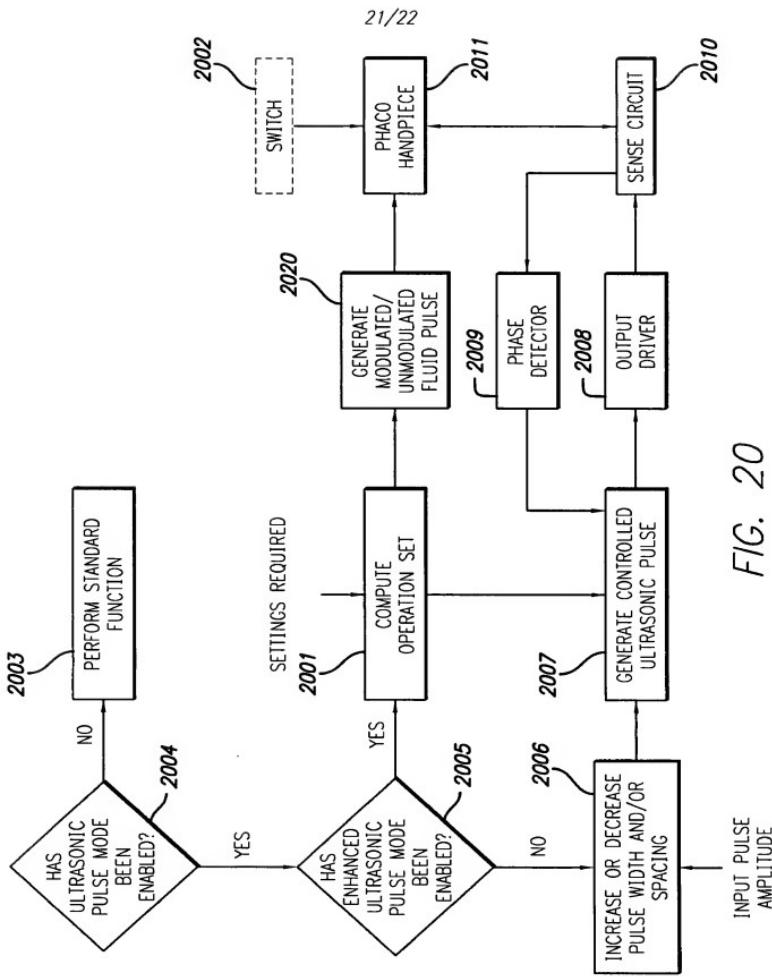


FIG. 19



F/G. 20

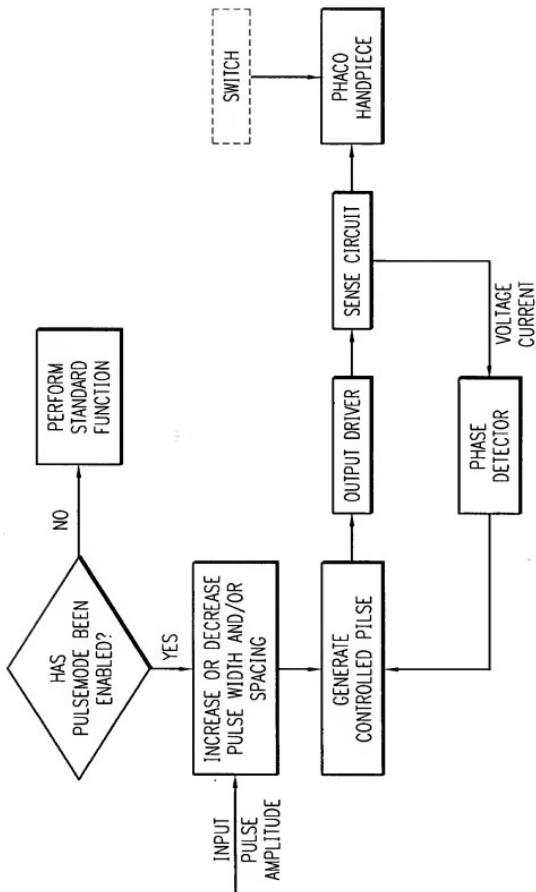


FIG. 21

Exhibit B

S.N. 10/619,888 File No. AND 0007 Date Mailed 10/26/10 By: KC
Title: System and Method for Modulated Surgical...

The following was received in the U.S. Patent and Trademark Office on the date stamped hereon:

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|--|--|
| <input type="checkbox"/> Amendment | Drawings: # of Sheets <u>22</u> |
| <input type="checkbox"/> Preliminary Amendment | <input checked="" type="checkbox"/> Formal <input type="checkbox"/> Informal |
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| <input type="checkbox"/> Pps Spec. <u> </u> Page Abstr <u> </u> Claims | <input type="checkbox"/> Request _____ |
| <input type="checkbox"/> Application for Patent Including: | <input type="checkbox"/> Notice of Appeal _____ |
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| <input type="checkbox"/> Amendment | Drawings: # of Sheets <u>22</u> |
| <input type="checkbox"/> Preliminary Amendment | <input checked="" type="checkbox"/> Formal <input type="checkbox"/> Informal |
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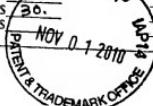
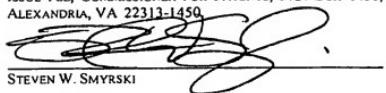


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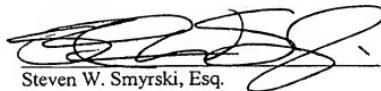
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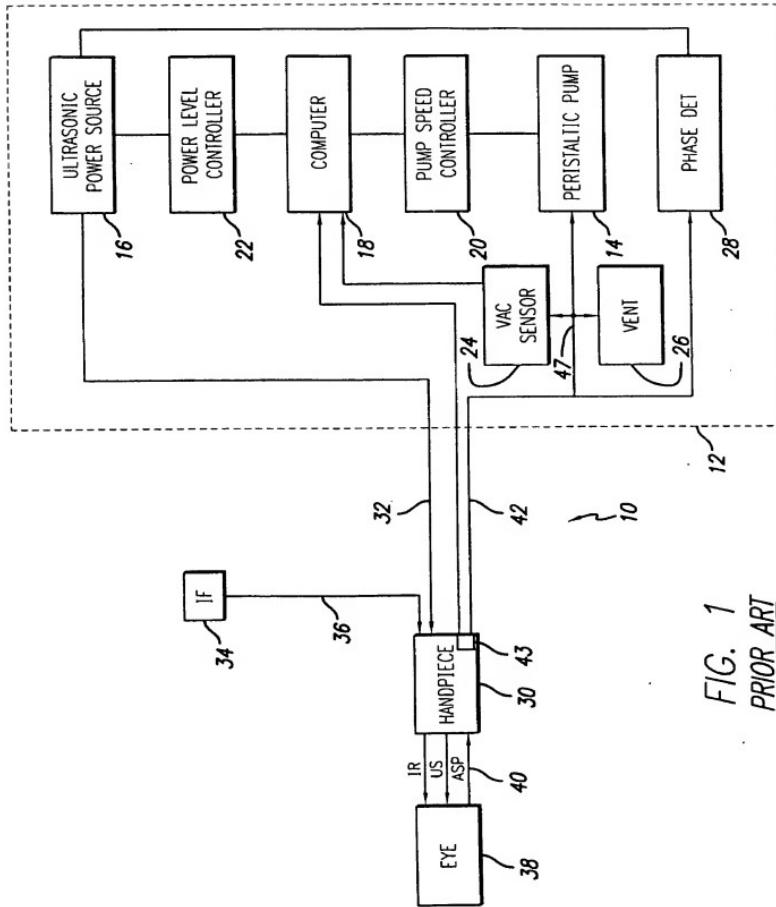
Respectfully submitted,

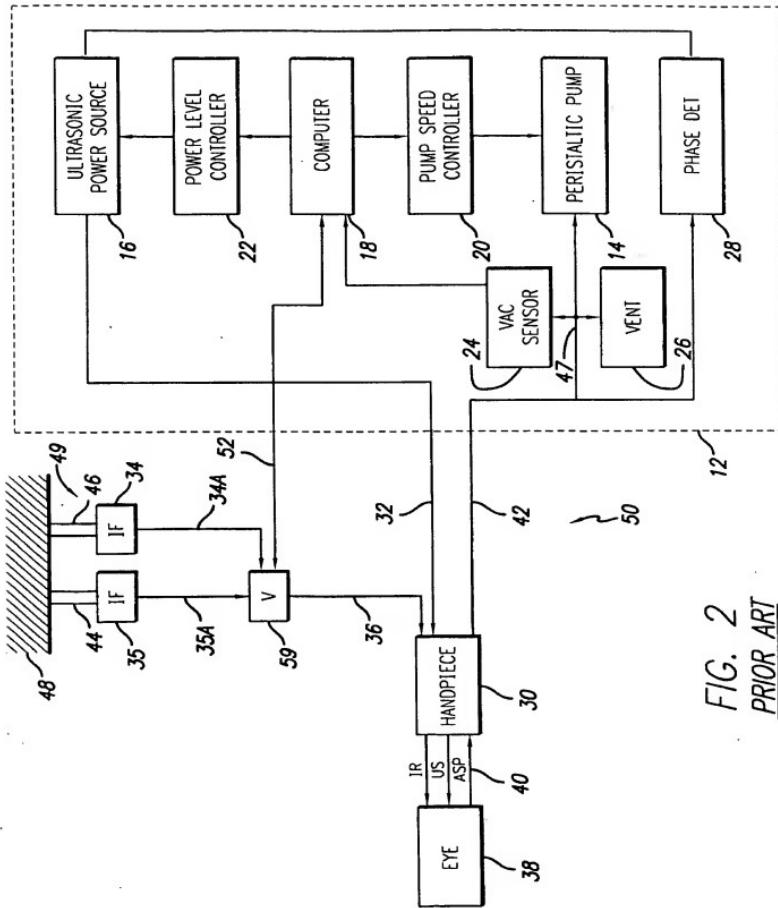


Steven W. Smyrski, Esq.
Registration No. 38,312

Date: October 26, 2010

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Santa Monica, California 90405-6118
Phone: 310.397.9118
Fax: 310.397.9158
AMO0007 Transmittal of drawings_102610





*FIG. 2
PRIOR ART*

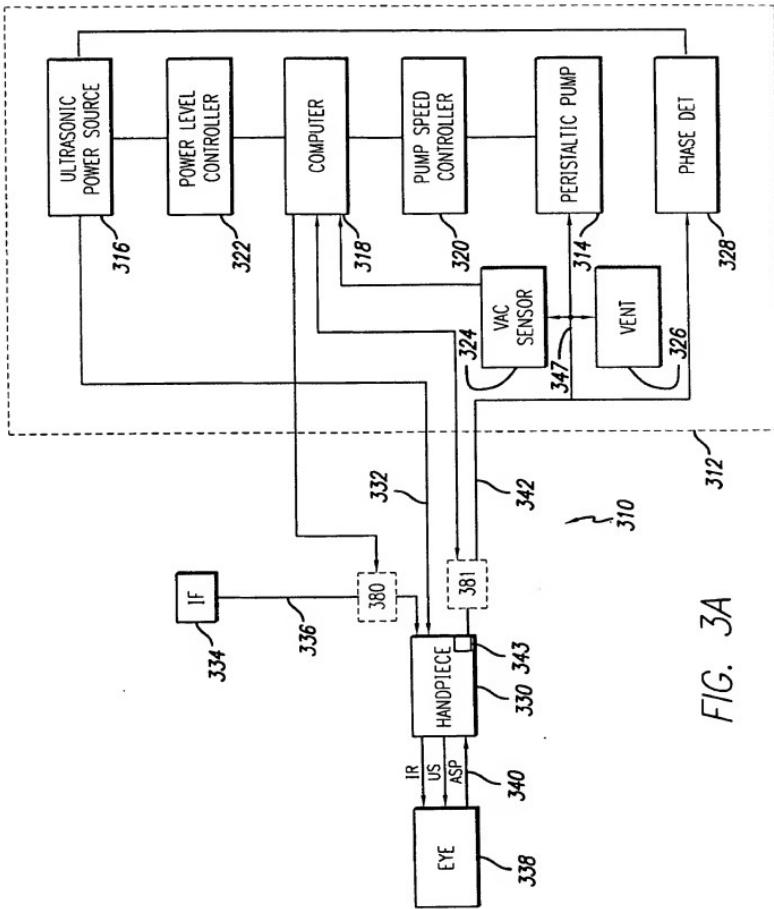


FIG. 3A

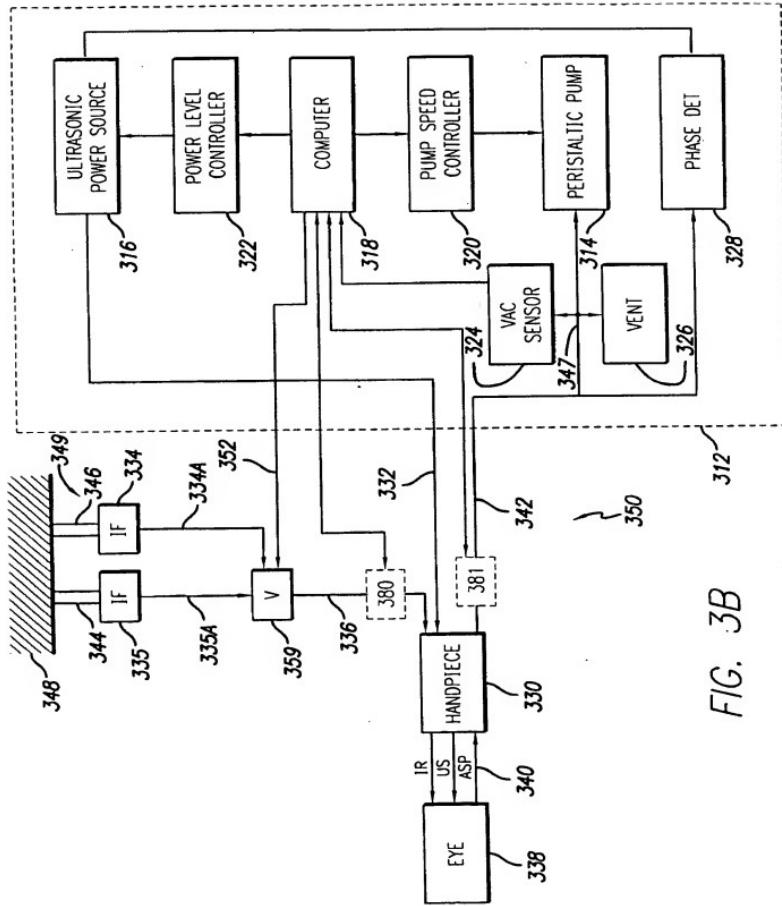


FIG. 3B

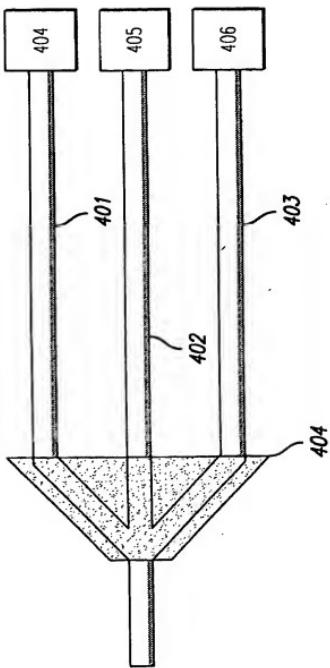


FIG. 4

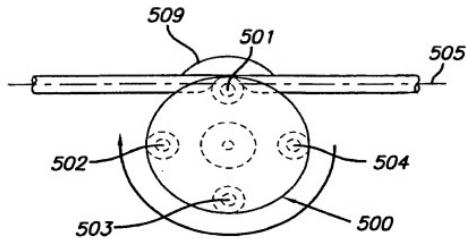


FIG. 5A

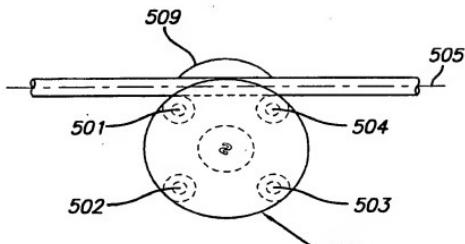


FIG. 5B

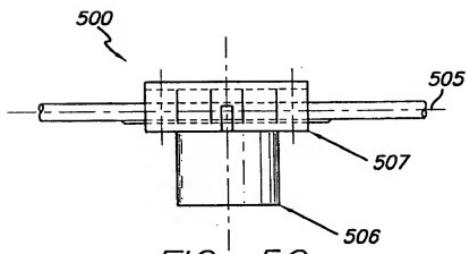


FIG. 5C

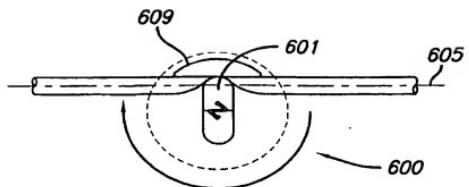


FIG. 6A

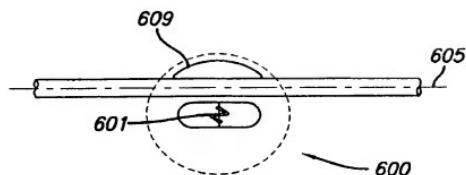


FIG. 6B

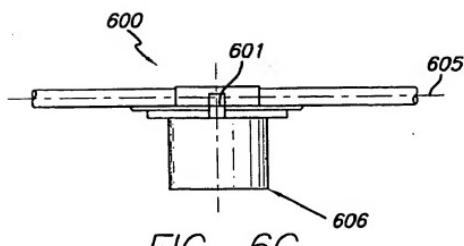


FIG. 6C

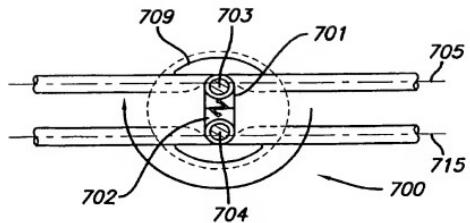


FIG. 7A

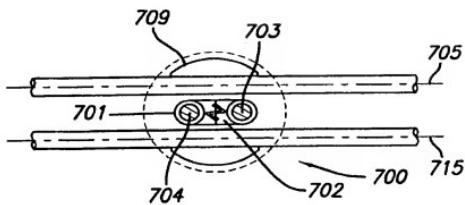


FIG. 7B

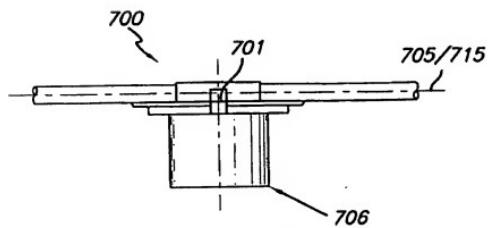


FIG. 7C

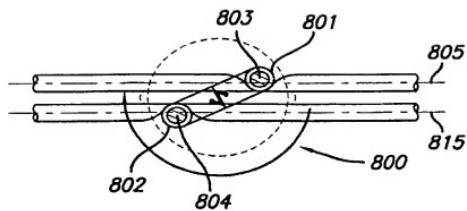


FIG. 8A

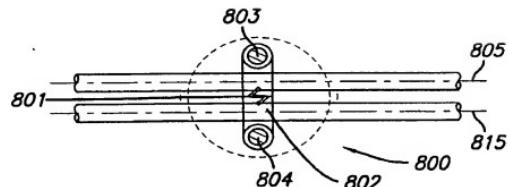


FIG. 8B

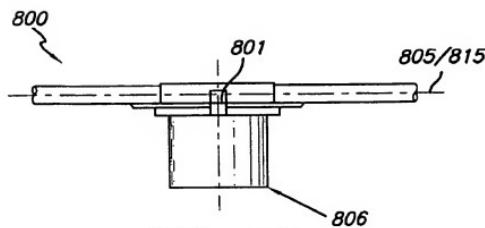


FIG. 8C

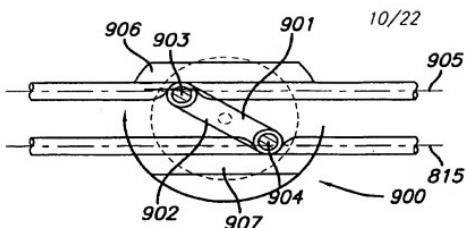


FIG. 9A

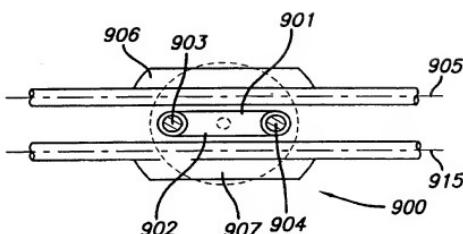


FIG. 9B

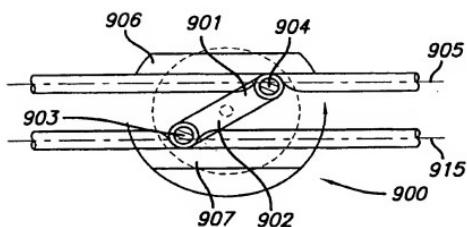


FIG. 9C

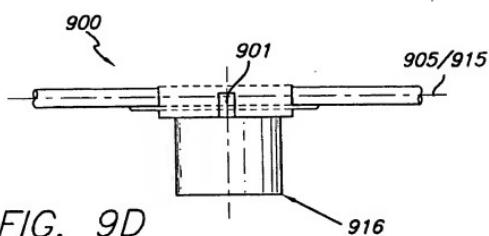


FIG. 9D

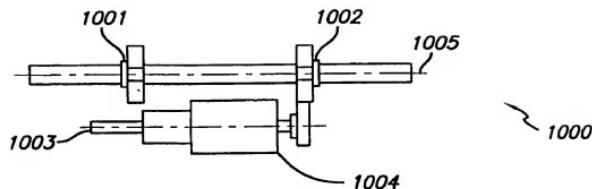


FIG. 10A

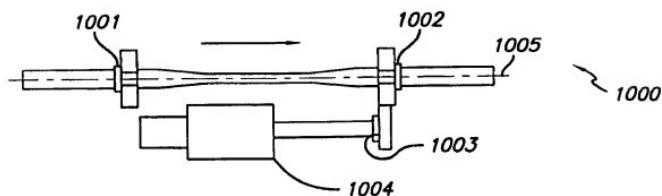


FIG. 10B

12/22

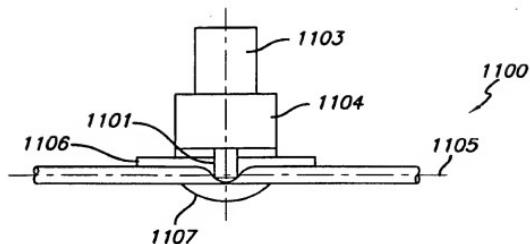


FIG. 11A

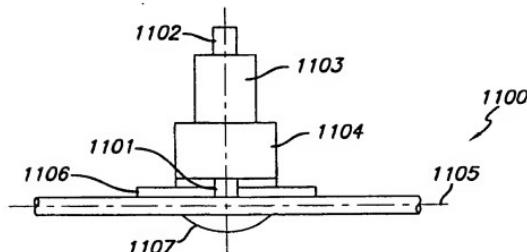


FIG. 11B

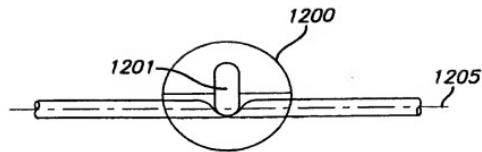


FIG. 12A

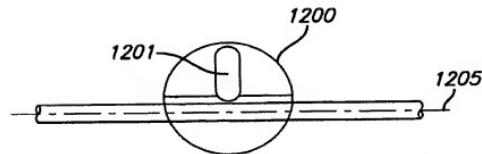


FIG. 12B

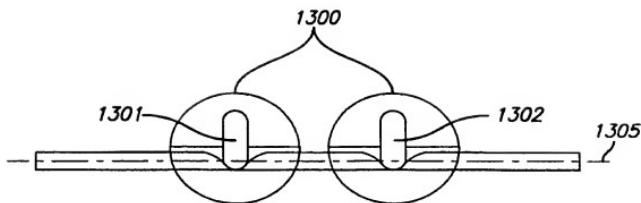


FIG. 13A

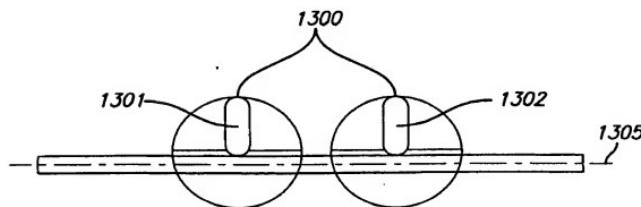


FIG. 13B

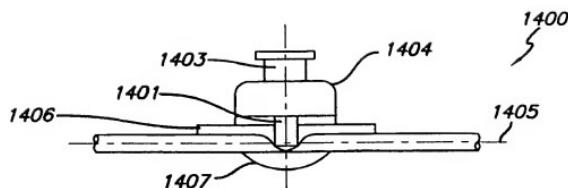


FIG. 14A

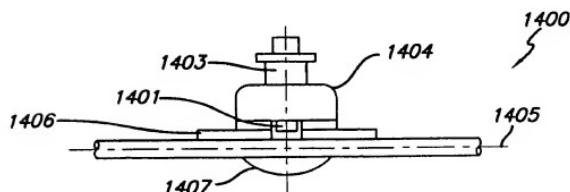


FIG. 14B

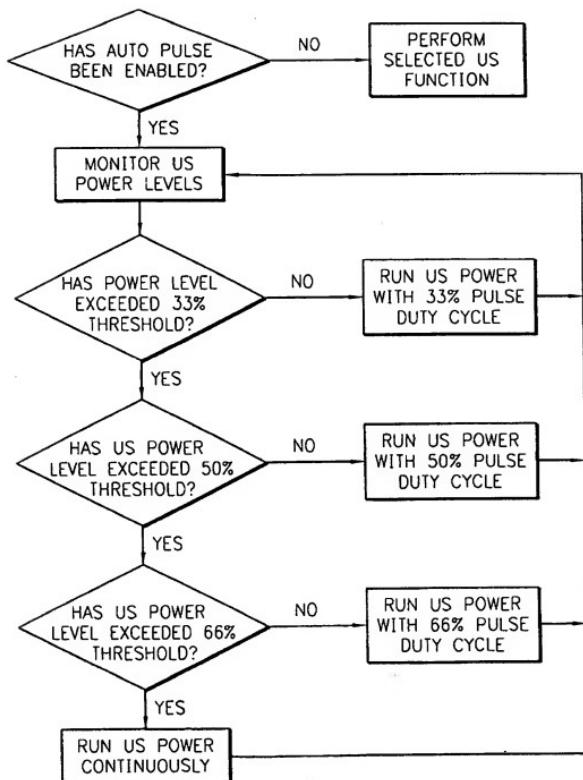


FIG. 15

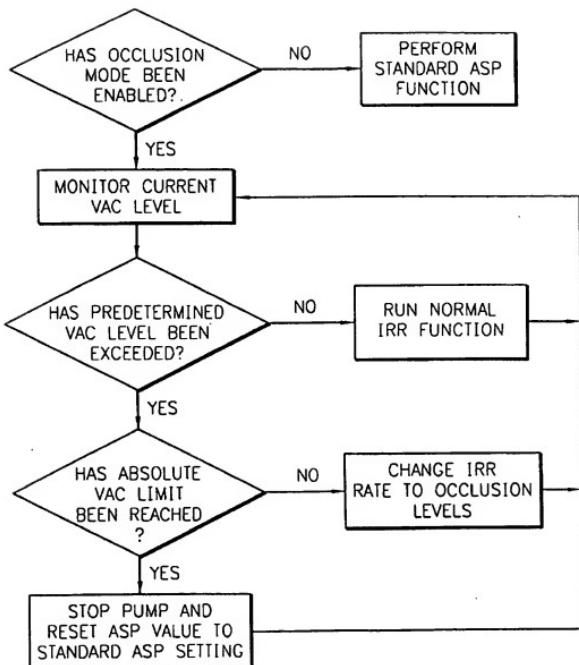


FIG. 16

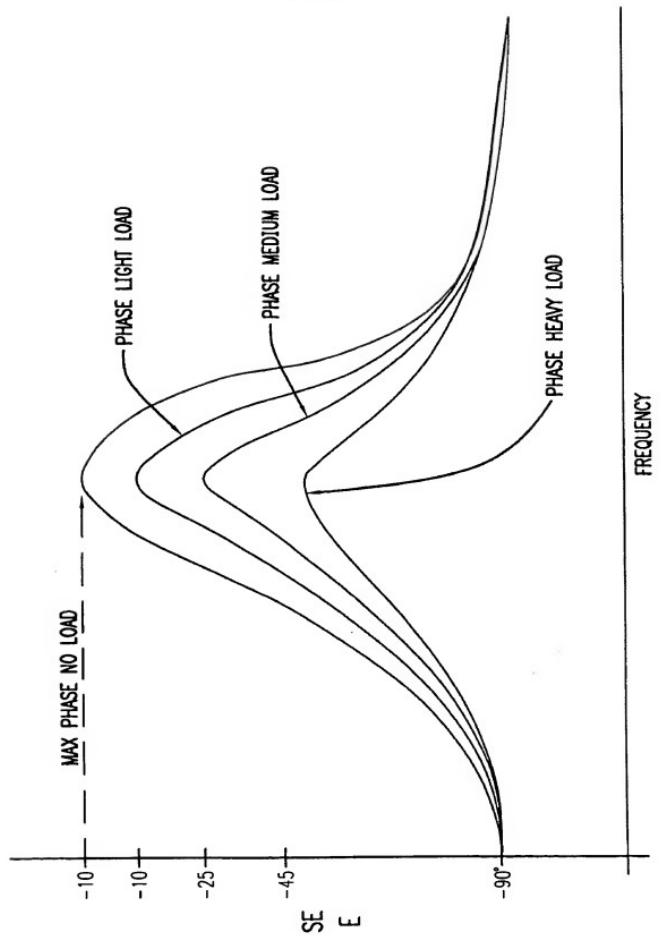


FIG. 17

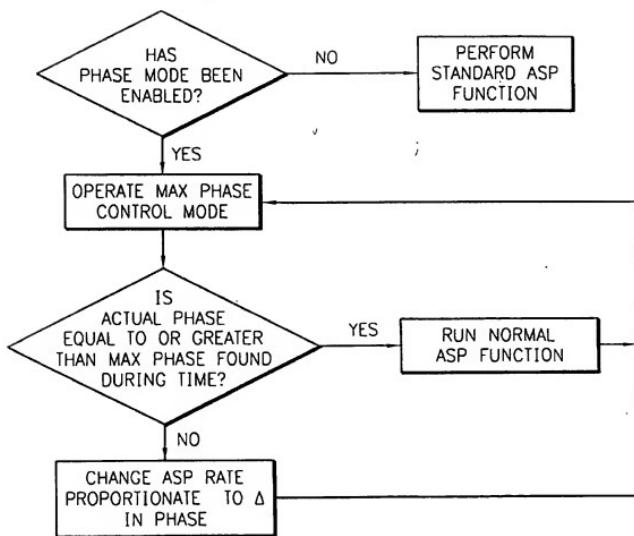


FIG. 18

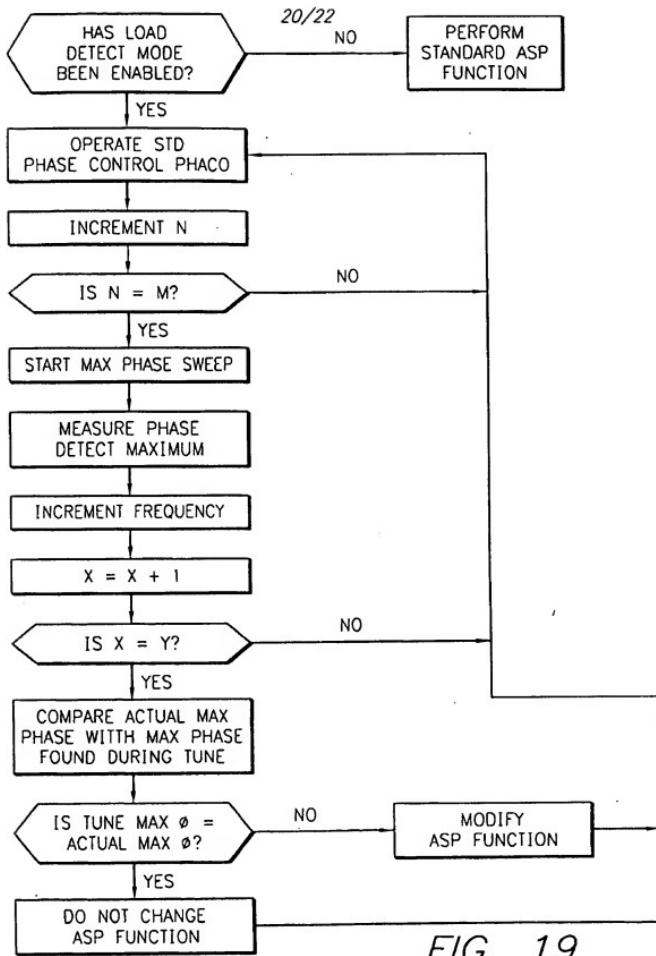


FIG. 19

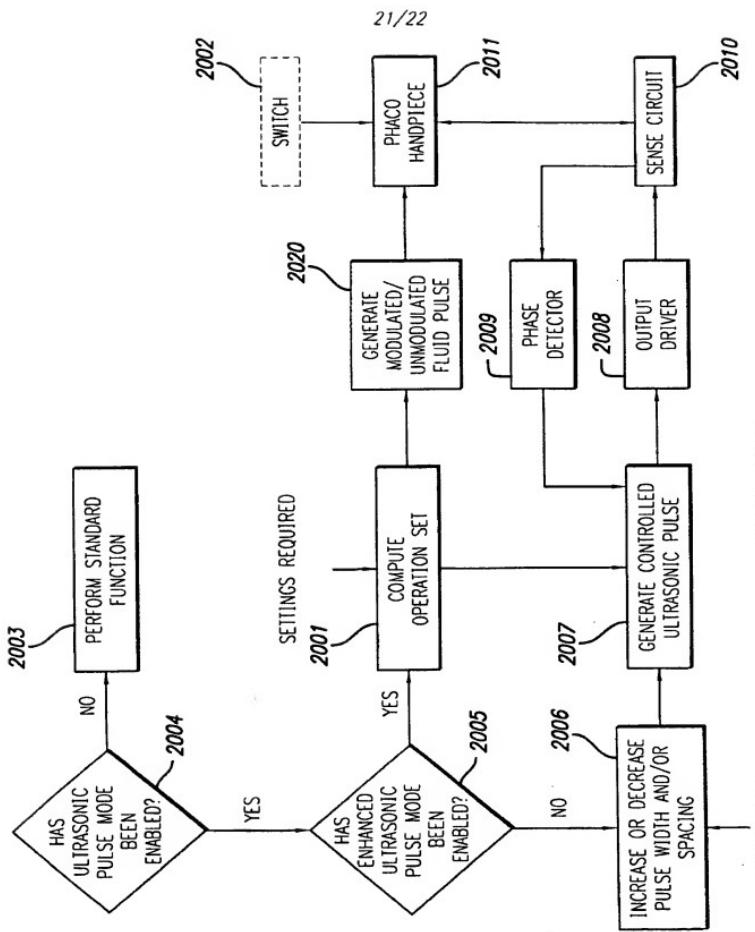


FIG. 20

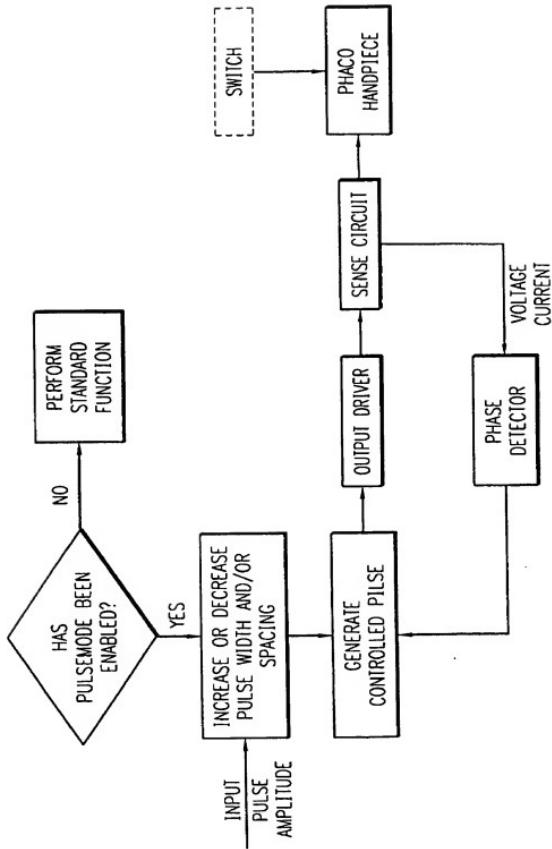


FIG. 21

Exhibit D

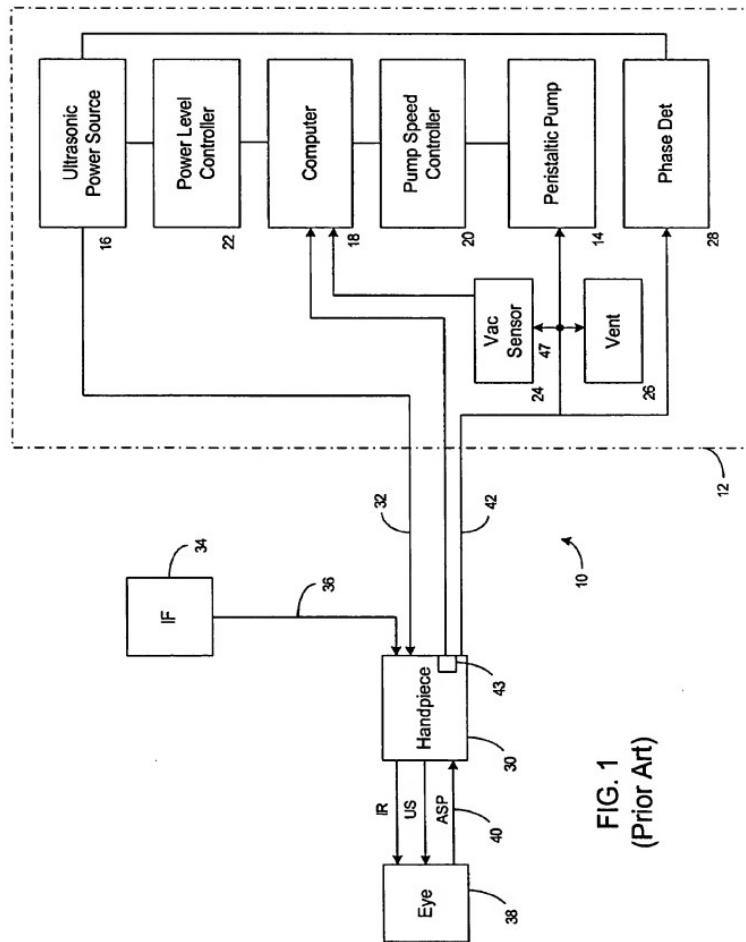
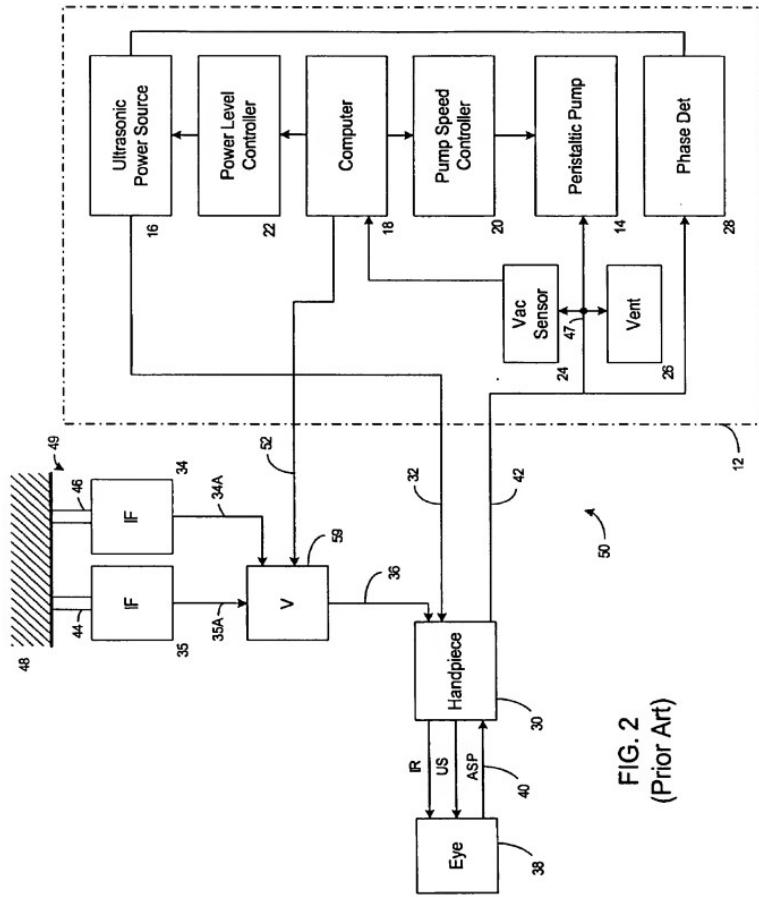


FIG. 1
(Prior Art)



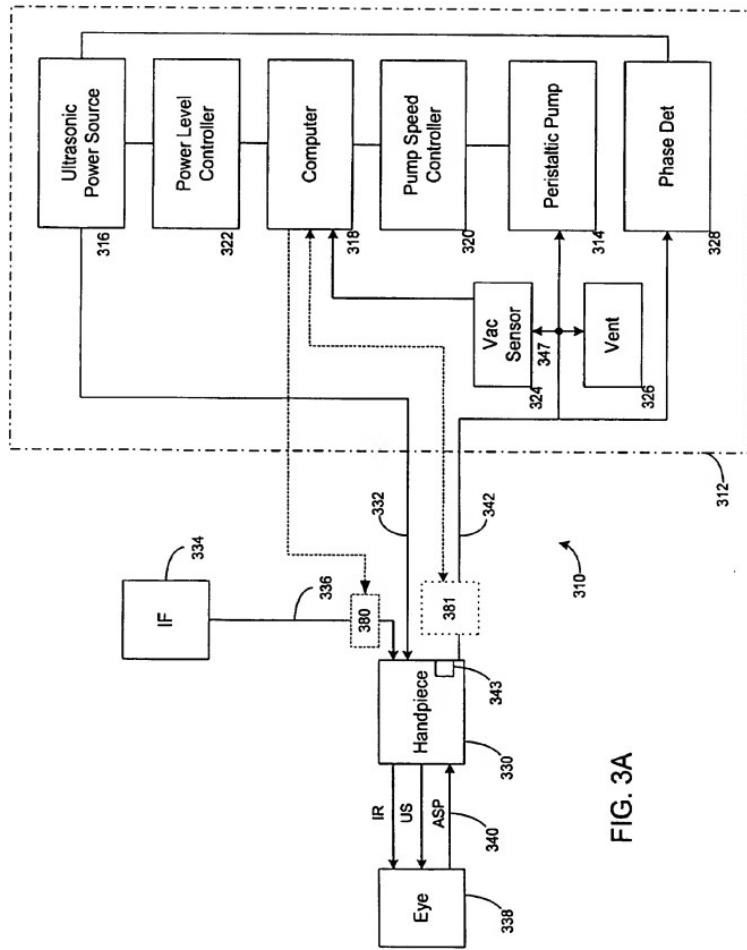


FIG. 3A

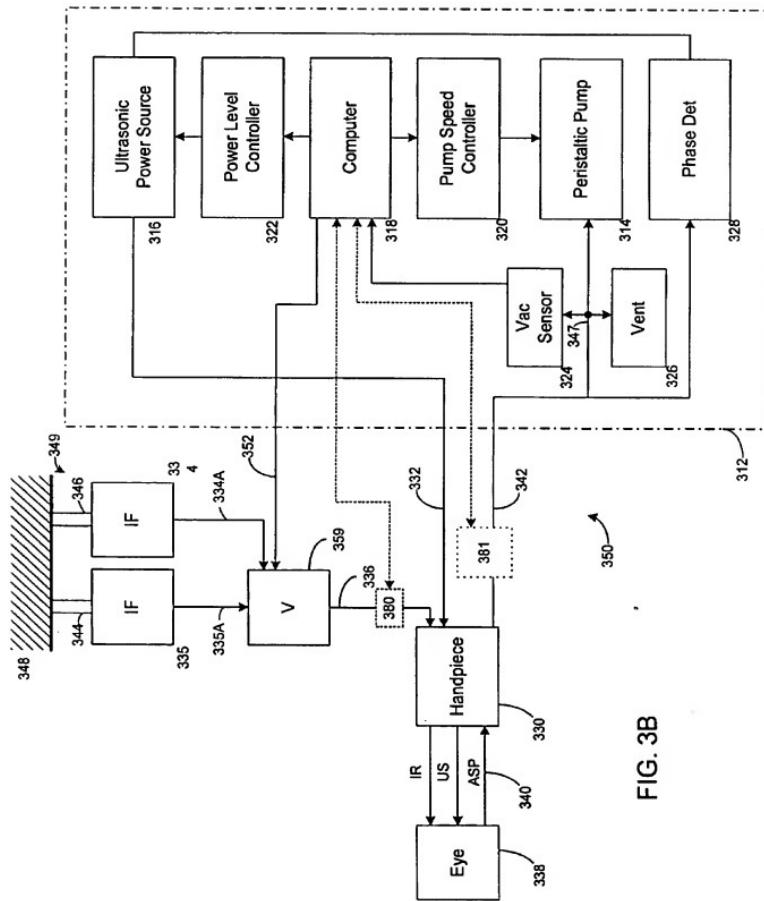


FIG. 3B

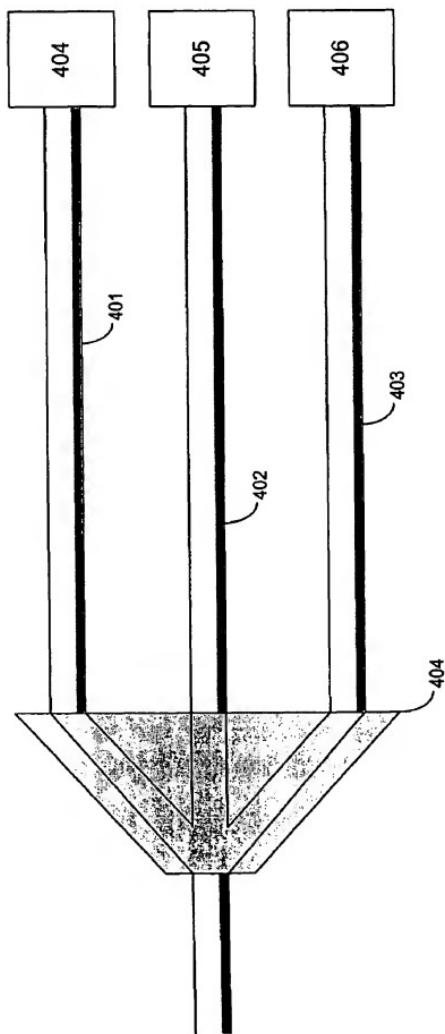


FIG. 4

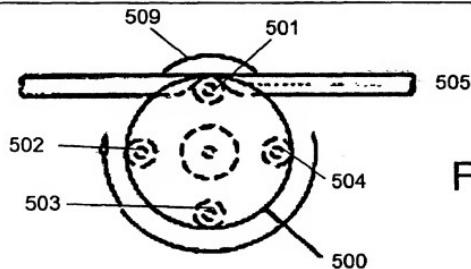


FIG. 5A

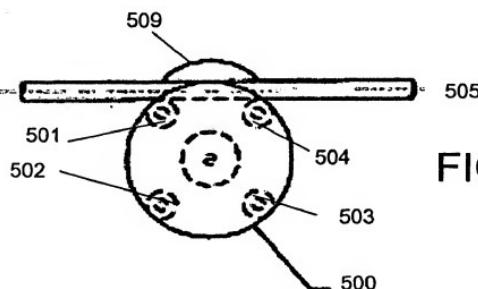


FIG. 5B

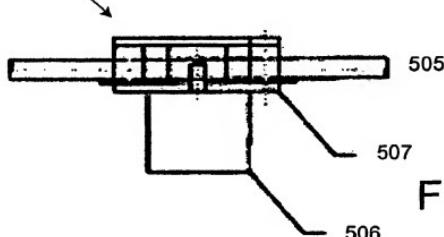


FIG. 5C

FIG. 5

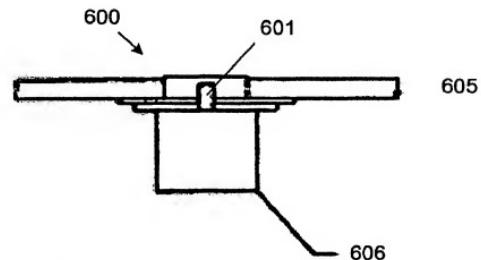
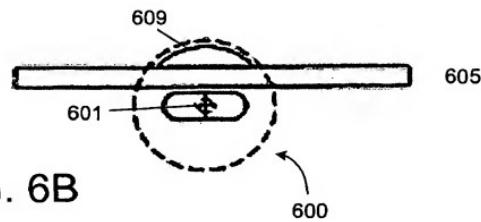
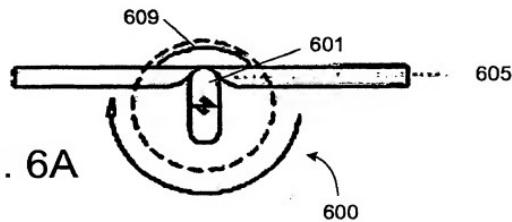


FIG. 6

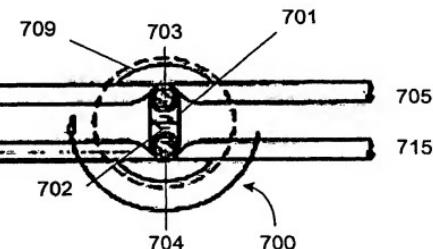


FIG. 7A

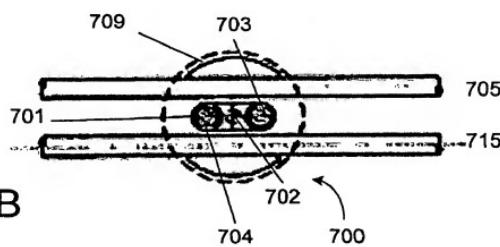


FIG. 7B

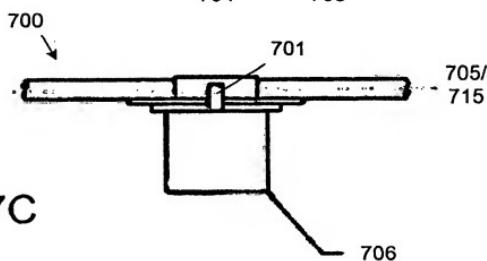


FIG. 7C

FIG. 7

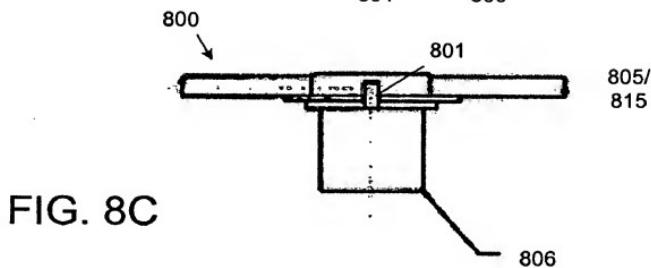
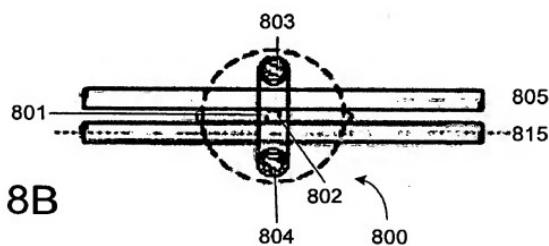
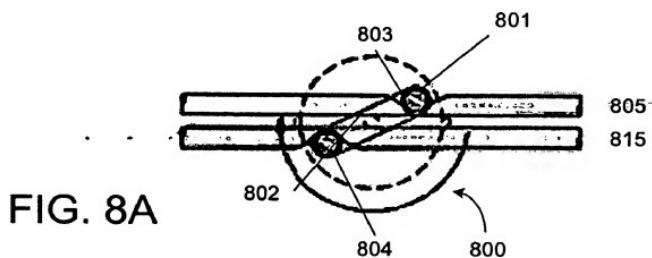


FIG. 8

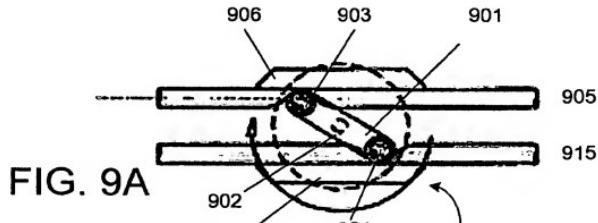


FIG. 9A

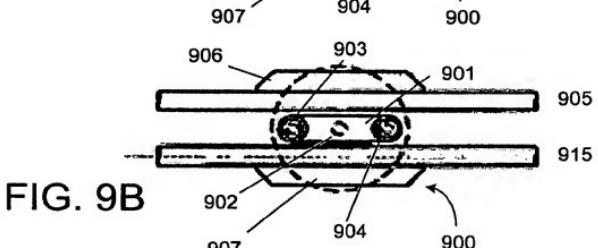


FIG. 9B

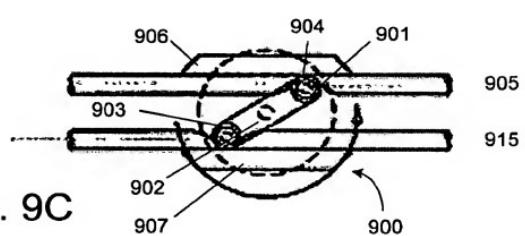


FIG. 9C

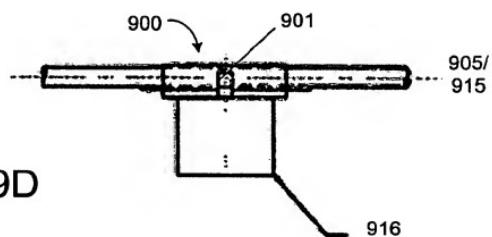


FIG. 9D

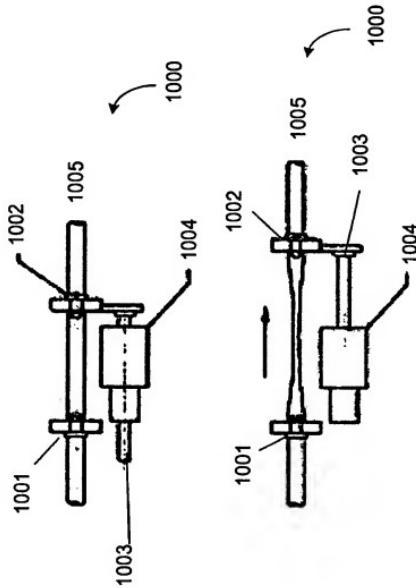


FIG. 10A

FIG. 10B

FIG. 10

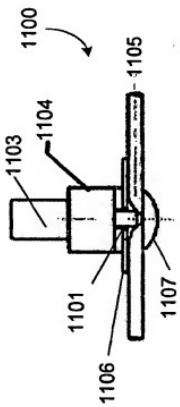


FIG. 11A

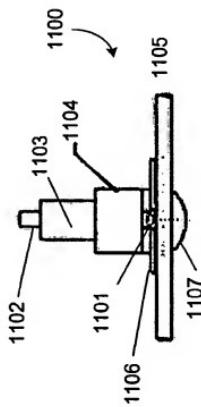


FIG. 11B

FIG. 11

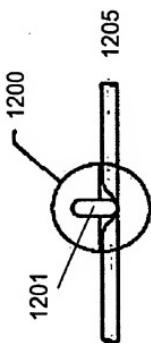


FIG. 12A

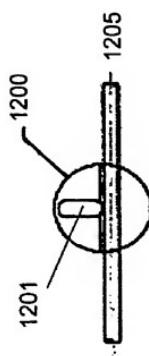


FIG. 12B

FIG. 12

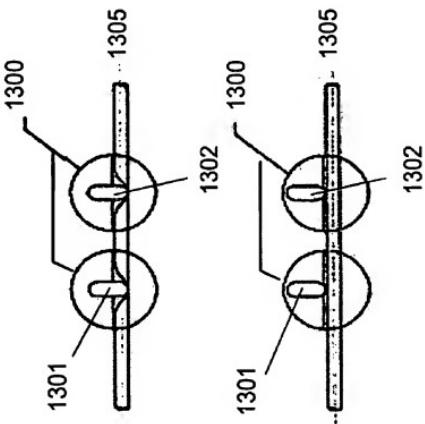


FIG. 13A

FIG. 13B

FIG. 13

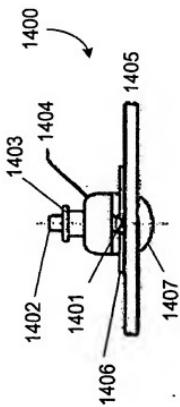
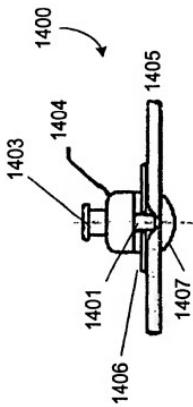


FIG. 14

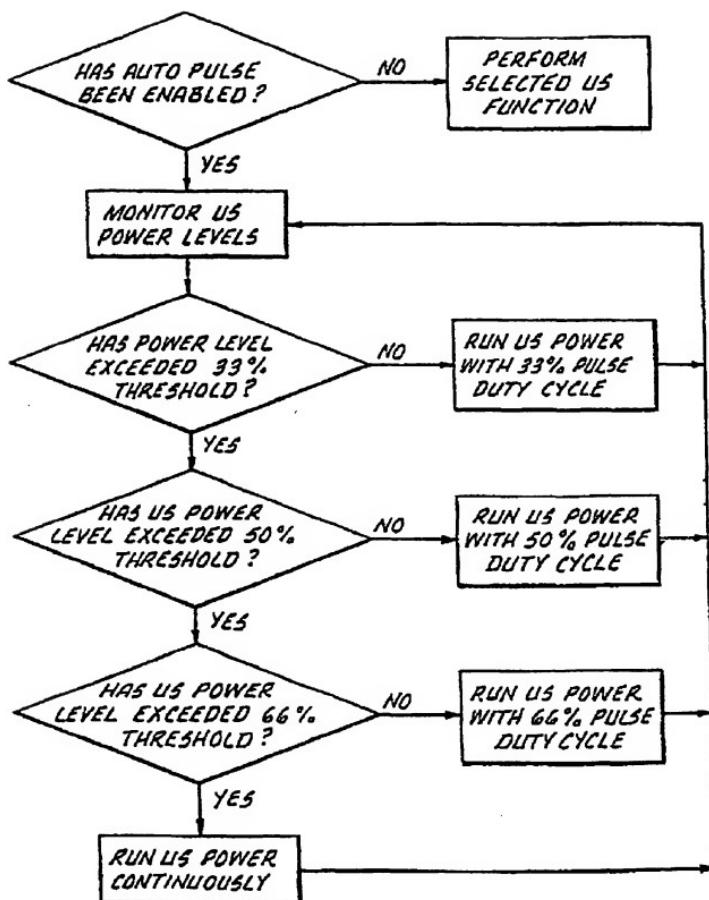


FIG. 15

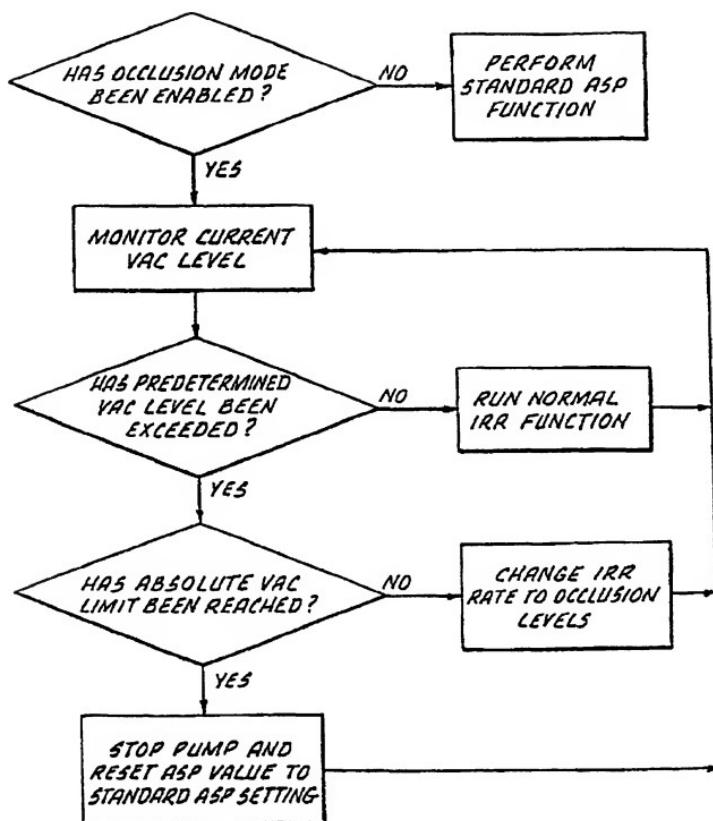


FIG. 16

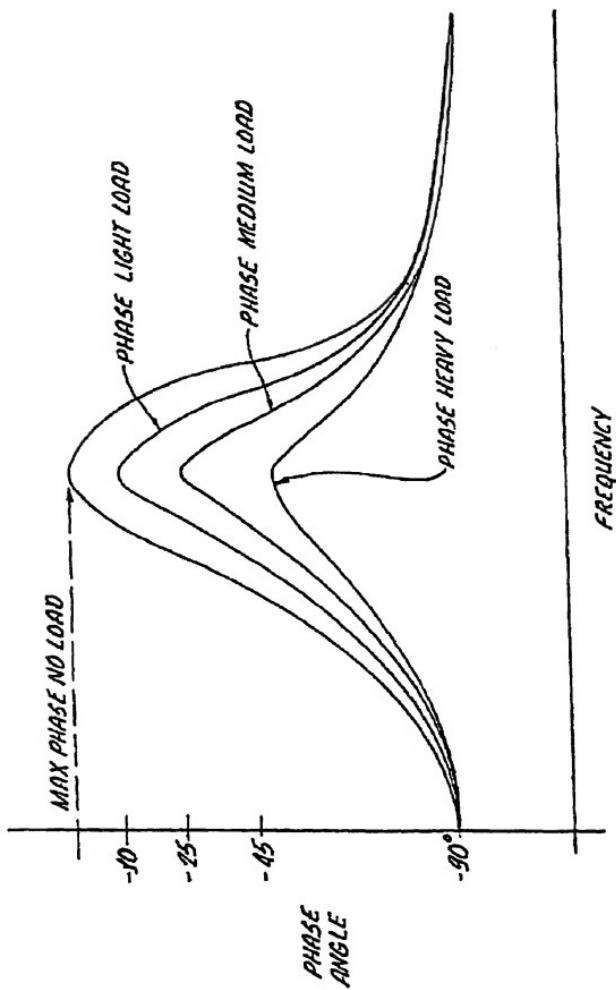


FIG. 17

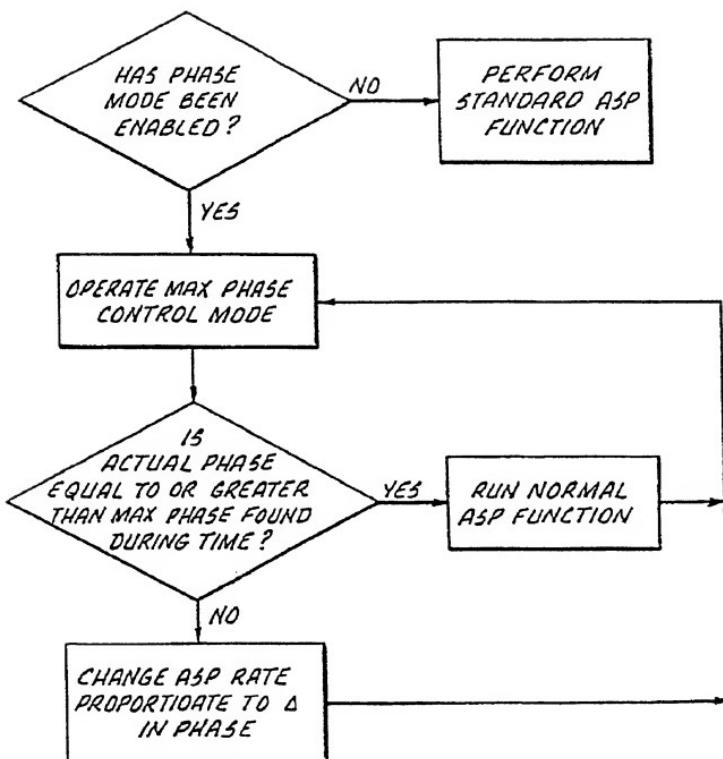


FIG. 18

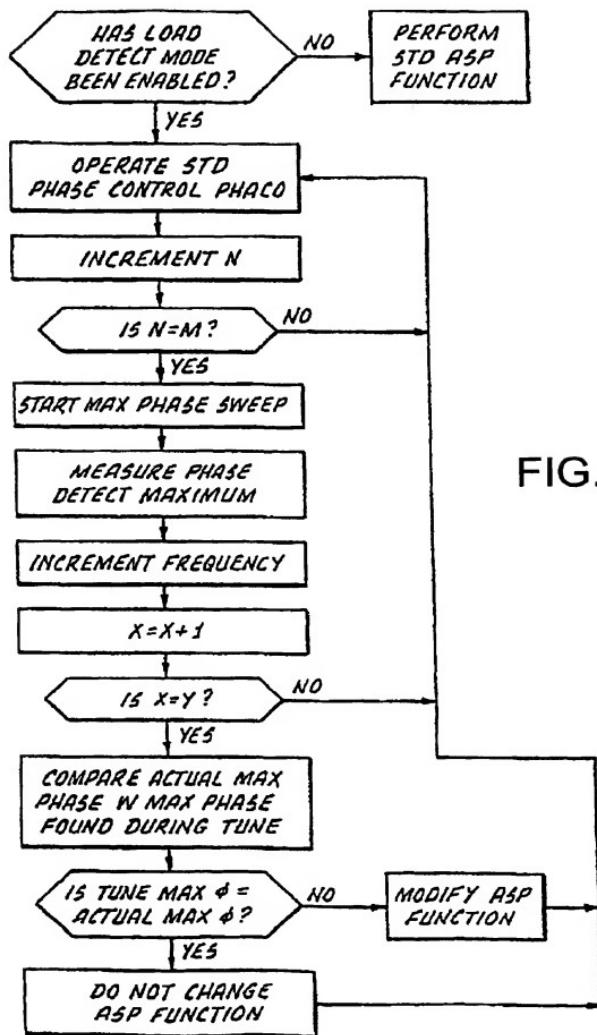
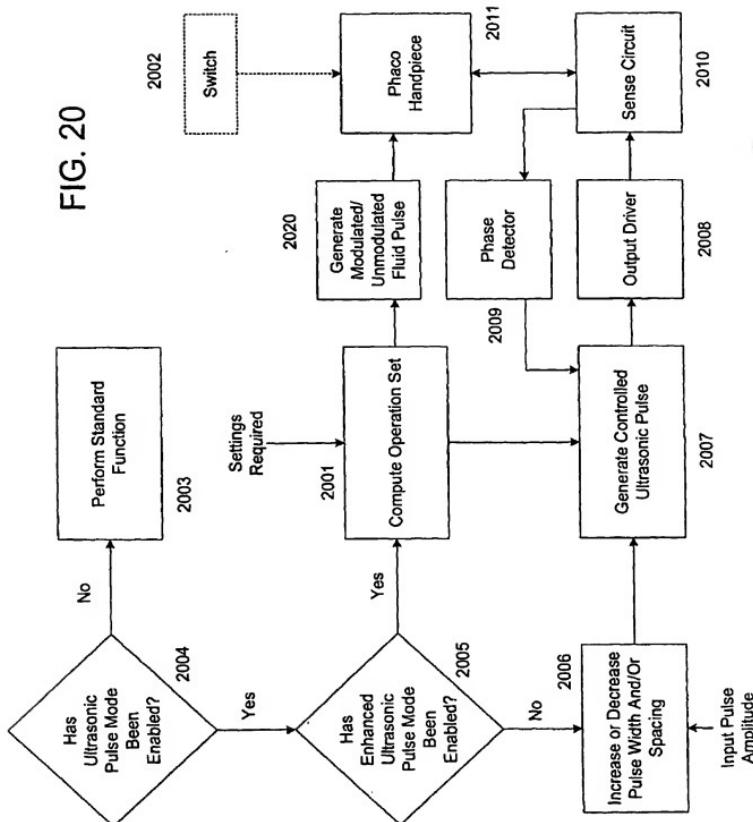


FIG. 19

FIG. 20



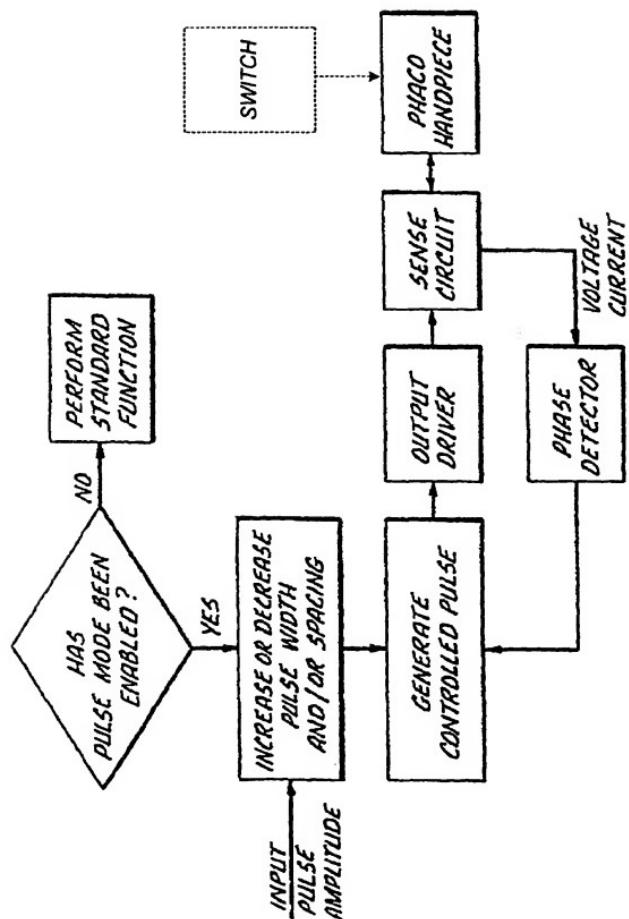


FIG. 21